

AMENDED IN SENATE JULY 2, 2014  
AMENDED IN SENATE JUNE 18, 2014  
AMENDED IN ASSEMBLY MAY 14, 2014  
AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1971**

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**Introduced by Assembly Member Bocanegra**

February 19, 2014

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An act to add and repeal Article 3.3 (commencing with Section 20119) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to best value procurement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1971, as amended, Bocanegra. ~~School districts: Los Angeles Unified School District:~~ best value procurement: pilot program.

The Local Agency Public Construction Act requires the governing board of any school district to let any contract for a public project, as defined, involving an expenditure of \$15,000 or more, to the lowest responsible bidder that gives security as the board requires, or else reject all bids.

This bill would establish a pilot program to authorize the Los Angeles Unified School District ~~and 3 other unspecified school districts~~ to use, before January 1, 2017, a best value procurement method for bid evaluation and selection for public projects that exceed \$1,000,000. The bill would establish various requirements applicable to the use of the best value procurement method under this authorization. The bill would require ~~a the school district that uses the best value procurement~~

method to submit an interim and final report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim and final report to the appropriate policy and fiscal committees of the Legislature on the use of the procurement method pursuant to the bill, in accordance with a specified schedule. These provisions would be repealed on January 1, 2020.

This bill would make legislative findings and declarations as to the necessity of a special statute for ~~a limited number of school districts of varying sizes, including, but not limited to,~~ the Los Angeles Unified School District.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 3.3 (commencing with Section 20119) is  
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract  
3 Code, to read:

4  
5 Article 3.3. School Districts—Best Value Procurement Pilot  
6 Program  
7

8 20119. (a) It is the intent of the Legislature to enable school  
9 districts to use cost-effective options for building and modernizing  
10 school facilities. The Legislature has recognized the merits of the  
11 best value procurement method process in the past by authorizing  
12 its use for projects undertaken by the University of California.

13 (b) The Legislature also finds and declares that school districts  
14 using the best value procurement method require a clear  
15 understanding of the roles and responsibilities of each participant  
16 in the best value process. As reflected in the University of  
17 California report to the Legislature, the benefits of a best value  
18 procurement method include a reduction in contract delays, change  
19 orders, and claims producing a savings in both contract costs and  
20 administration.

21 (c) It is the intent of the Legislature to provide an optional,  
22 alternative procedure for bidding and building school construction  
23 projects.

24 20119.1. As used in this article:

1 (a) “Best value” means a procurement process whereby the  
2 selected bidder may be selected on the basis of objective criteria  
3 for evaluating the qualifications of bidders with the resulting  
4 selection representing the best combination of price and  
5 qualifications.

6 (b) “Best value contract” means a competitively bid contract  
7 entered into pursuant to the provisions of this article.

8 (c) “Best value contractor” means a properly licensed person,  
9 firm, or corporation that submits a bid for, and is awarded, a best  
10 value contract.

11 (d) “Demonstrated management competency” means the  
12 experience, competency, capability, and capacity of the proposed  
13 management staffing to complete projects of similar size, scope,  
14 or complexity.

15 (e) “Financial condition” means the financial resources needed  
16 to perform the contract. The criteria used to evaluate a bidder’s  
17 financial condition shall include, at a minimum, capacity to obtain  
18 all required payment bonds, and required insurance.

19 (f) “Labor compliance” means the ability to comply with, and  
20 past performance with, contract and statutory requirements for the  
21 payment of wages and qualifications of the workforce. The criteria  
22 used to evaluate a bidder’s labor compliance shall include, at a  
23 minimum, the bidder’s ability to comply with the apprenticeship  
24 requirements of the California Apprenticeship Council and the  
25 Department of Industrial Relations, its past conformance with such  
26 requirements, and its past conformance with requirements to pay  
27 prevailing wages on public works projects.

28 (g) “Project” has the same meaning as “public project” as  
29 defined in subdivision (c) of Section 22002.

30 (h) “Qualifications” means financial condition, relevant  
31 experience, demonstrated management competency, labor  
32 compliance, skilled and trained workforce, the safety record of the  
33 bidder, and if required by the bidding document, some or all of  
34 the preceding qualifications as they pertain to subcontractors  
35 proposed to be used by the bidder for designated portions of the  
36 work.

37 (i) “Relevant experience” means the experience, competency,  
38 capability, and capacity to complete projects of similar size, scope,  
39 or complexity.

(j) “Safety record” shall be deemed “acceptable” if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period do not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(k) ~~(1) “Skilled and trained workforce” means a workforce that meets both of the following criteria, as applicable:~~

~~(A) All the workers are either registered apprentices or skilled journeypersons.~~

~~(B) (i) As of January 1, 2015, at least 45 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.~~

~~(ii) As of January 1, 2016, at least 60 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.~~

~~(2) A school district and a contractor are not required to track the percentage of journeypersons that are graduates of an apprenticeship program if the governing board of the school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project.~~

~~(l) “Skilled journeyperson” means a worker who meets either of the following criteria:~~

~~(1) The worker either graduated from an apprenticeship for the applicable occupation that was approved by the Chief of the Division of Apprenticeship Standards or adheres to the apprenticeship regulations adopted by the federal Secretary of Labor.~~

~~(2) The worker has at least as many hours of on-the-job experience in the applicable occupation that would be required to~~

~~graduate from an apprenticeship program for the applicable occupation that is approved by the Chief of the Division of Apprenticeship Standards.~~

(k) (1) *“School district” means the Los Angeles Unified School District.*

(2) *“Governing board” or “governing board of the school district” means the governing board of the Los Angeles Unified School District.*

20119.2. (a) This article provides for a pilot program for ~~four~~ school districts of different sizes *the Los Angeles Unified School District* to use best value procurement for projects over one million dollars (\$1,000,000).

(b) The governing ~~boards~~ *board*, ~~of the following four school districts,~~ for projects over one million dollars (\$1,000,000), before January 1, 2017, may use the best value procurement method in accordance with this ~~article:~~ *article.*

(1) ~~The Los Angeles Unified School District.~~

(2) ~~\_\_\_\_\_.~~

(3) ~~\_\_\_\_\_.~~

(4) ~~\_\_\_\_\_.~~

(c) The governing board of ~~any~~ *the* school district shall let any contract for a project pursuant to this article to the selected bidder that represents the best value or else reject all bids.

(d) The bidder may be selected on the basis of the best value to the governing board of the school district. In order to implement this method of selection, the governing board of the school district shall adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders that ensure the best value selections by the school district are conducted in a fair and impartial manner. These procedures and guidelines shall conform to this article and shall be mandatory for the school district when using best value selection.

(e) If the governing board of the school district deems it to be for the best interest of the school district, the governing board of the school district, on the refusal or failure of the selected bidder for a project to execute a tendered contract, may award it to the second lowest scored bidder that represents the best value. If the second bidder fails or refuses to execute the contract, the governing board of the school district may likewise award it to the third lowest scored bidder.

(f) (1) If the *school* district elects to award a project pursuant to this section, retention proceeds withheld by the district from the selected best value contractor shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the selected best value contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the district and the selected best value contractor. If the selected best value contractor provides written notice to a subcontractor that, prior to or at the time the bid is requested, a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the selected best value contractor, then the selected best value contractor may withhold retention proceeds in excess of the percentage specified in the contract between the district and the selected best value contractor from any payment made by the selected best value contractor to the subcontractor.

(g) All subcontractors bidding on contracts pursuant to this chapter shall be afforded the protection contained in Chapter 4 (commencing with Section 4100).

20119.3. The governing board of the school district shall proceed in accordance with the following when awarding best value contracts under this article:

(a) The school district shall prepare a solicitation for bids and give notice pursuant to Section 20112.

(b) The school district shall establish a procedure to prequalify bidders as required by this code. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) Each solicitation for bids shall do all of the following:

(1) Invite prequalified bidders to submit sealed bids in the manner prescribed by this article.

(2) Include a section identifying and describing the following:

(A) Criteria that the school district will consider in evaluating the qualifications of the bidders.

1 (B) The methodology and rating or weighting system that will  
2 be used by the school district in evaluating bids.

3 (C) The relative importance or weight assigned to the criteria  
4 for evaluating the qualifications of bidders identified in the request  
5 for bids.

6 (d) Final evaluation of the bidders shall be done in a manner  
7 that prevents the identity of the bidders and the cost or price  
8 information from being revealed in evaluating the qualifications  
9 of the bidders prior to completion of qualification scoring.

10 20119.4. Selection of the best value contractor shall be made  
11 as follows:

12 (a) (1) The school district shall evaluate the qualifications of  
13 the bidders based solely upon the criteria set forth in the solicitation  
14 documents, and shall assign a qualification score to each bid.

15 (2) Factors in determining a qualification score shall include,  
16 but are not limited to, relevant experience, skilled and trained  
17 workforce, and acceptable safety record and shall be weighted in  
18 accordance with the following:

19 (A) At least 50 percent of the total weight or consideration shall  
20 be given to the following factors: relevant experience, skilled and  
21 trained workforce, and acceptable safety record. A factor listed  
22 above shall make up at least 15 percent of the total weight or  
23 consideration. Other factors may be included, in addition to  
24 relevant experience, skilled and trained workforce, and acceptable  
25 safety record, in determining a qualification score.

26 (B) No more than 50 percent of the total weight or consideration  
27 shall be given to price. A bidder that qualifies as a certified small  
28 business shall receive a 5-percent bid preference.

29 (b) To determine the best value contractor, the school district  
30 shall divide each bidder's price by its qualifications score. A  
31 preference of up to 5 percent shall be applied to the price of a bid  
32 submitted by a small business, as defined by the school district,  
33 before dividing the bidder's price by its qualification score. The  
34 lowest resulting cost per quality point will represent the best value  
35 bid. The award of the contract shall be made to the bidder whose  
36 bid is determined, by the school district in writing, to be the best  
37 value to the school district.

38 (c) The school district shall issue a written decision of its  
39 contract award or else reject all bids.

(d) Upon issuance of a contract award, the school district shall publicly announce its award identifying the project, the project price, the best value contractor to which the award is made, as well as the prices, qualification scores, and resulting costs per qualification point for all responsive bidders. The contract file shall include documentation sufficient to support the decision to award.

20119.5. (a) (1) A school district that uses the best value procurement method pursuant to this article shall submit to the Legislative Analyst the following reports completed by an independent third party:

(A) An interim report on or before July 1, 2017.

(B) A final report on or before January 1, 2019.

(2) A report shall include, but is not limited to, the following information:

(A) A description of the projects awarded using the best value procedures.

(B) The contract award amounts.

(C) The best value contractors awarded the projects.

(D) A description of any written protests concerning any aspect of the solicitation, bid, or award of the best value contracts, including the resolution of the protests.

(E) A description of the prequalification process.

(F) The criteria used to evaluate the bids, including the weighting of the criteria and an assessment of the effectiveness of the methodology.

(G) If a project awarded under this article has been completed, an assessment of the project performance, to include a summary of any delays or cost increases.

(b) (1) The Legislative Analyst shall submit an interim report to the appropriate policy and fiscal committees of the Legislature on the use of the best value procurement method by school districts on or before January 1, 2018, and a final report on or before July 1, 2019. The report may include the information provided from the school district reports pursuant to subdivision (a) and any pertinent information that the Legislative Analyst deems instructive in evaluating whether the best value procurement method should be continued, expanded, or prohibited.



1 (2) The requirement for submitting a report imposed pursuant  
2 to this subdivision is inoperative on January 1, 2020, pursuant to  
3 Section 10231.5 of the Government Code.

4 20119.6. Except as otherwise provided in this article, the best  
5 value procurement method is not intended to change any guideline,  
6 criterion, procedure, or requirement of the governing board of the  
7 school district to let a contract for a project to the lowest  
8 responsible bidder or else reject all bids.

9 20119.7. This article shall remain in effect only until January  
10 1, 2020, and as of that date is repealed, unless a later enacted  
11 statute, that is enacted before January 1, 2020, deletes or extends  
12 that date.

13 SEC. 2. The Legislature finds and declares that a special law  
14 is necessary and that a general law cannot be made applicable  
15 within the meaning of Section 16 of Article IV of the California  
16 Constitution because of the need to establish a pilot project for a  
17 ~~limited number of school districts of varying sizes, including, but~~  
18 ~~not limited to,~~ the Los Angeles Unified School District, *District*  
19 to determine the potential benefits and consequences of using best  
20 value procurement to facilitate infrastructure improvements and  
21 ease fiscal impacts.